IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1921 of 1984

Date of decision: 14-3-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHANTILAL M SHAH

Versus

DENA BANK

Appearance:

MR RN SHAH for Petitioner

NANAVATI ASSOCIATES for Respondent No. 1

SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/03/97

ORAL JUDGEMENT

The petitioner, an employee of the Dena Bank has filed this petition challenging the order dated 15th March, 1983 of the Disciplinary Authority under which he was ordered to be dismissed from services of the Bank with immediate effect. The challenge has also been made to the order dated 4th July, 1983 of the appellate authority, under which the appeal filed by the petitioner against the aforesaid order has been dismissed.

2. Mr. R. N. Shah, learned counsel for the petitioner, challenging the legality, propriety and correctness of the aforesaid orders made fivefold contentions:

(i) The departmental inquiry held against the petitioner as well as the order of penalty of dismissal from service and the order of the appellate authority are vitiated on the ground that copy of the inquiry report was not given to the petitioner before passing the order of dismissal. In support of this contention reliance has been placed on the clauses 8 and 9 of the Dena Bank Officer Employees' (Discipline and Appeal) Regulations 1976.

(ii) It has next been contended that the petitioner has been acquitted on the same charges in criminal case and as such no departmental inquiry could have been initiated against him.

(iii) Third contention has been raised that no financial loss has been caused to the Bank because of the misconduct alleged against the petitioner, and as such the question of departmental inquiry as well as penalty of dismissal does not arise.

(iv) The fourth contention raised by the learned counsel for the petitioner is that the petitioner was not paid subsistence allowance from the date of suspension till the date of dismissal, though he was entitled for the same.

(v) The last contention raised is that the penalty of dismissal given to the petitioner in the present is disproportionate to the guilt found proved against him.

On the other hand learned counsel for the Bank supported the orders impugned in this special civil application.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties, and perused the special civil application. Clause 7 of the Regulations 1976 provides that the disciplinary authority, if it itself is not the inquiry authority,

may, for reasons to be recorded by it in writing, remit the case to the inquiry authority for fresh or further inquiry and report and the inquiry authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be. In the case where the disciplinary authority disagrees with the finding of the inquiry authority on any article of charge,has to record his reasons for such disagreement and his own findings on such charges if the evidence on record is sufficient for the purpose. Having regard to its findings on all or any of the articles of charge, if the disciplinary authority is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty. Where the disciplinary authority, having regard to its finding on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass order, exonerating the officer employee concerned. Regulation 9 of the Regulation 1976 provides that the orders made by the disciplinary authority under regulation 7 or regulation 8 shall be communicated to the officer employee concerned, who shall also be supplied with a copy of the report of the inquiry, if any. In regulation 8, the procedure for imposing minor penalties has been provided. From the reading of Regulation 9 of Regulations 1976, it is explicit that the inquiry report has to be supplied to the delinquent officer employee along with the order of the disciplinary authority made under Rugulation 7.

4. The counsel for the petitioner is unable to site any regulation from Regulations 1976 under which the disciplinary authority is under obligation to first give a show cause notice to the delinquent employee officer, along with the inquiry report, before passing of the order of penalty under Regulation 7 of the said Regulations. The counsel for the petitioner admitted that the inquiry report has been supplied to the petitioner with the order of the disciplinary authority at annexure-A, under which the petitioner was ordered to be dismissed from service. In view of the provisions as contained in Regulation 9 of the Regulations 1976, the first contention of the counsel for the petitioner deserves no acceptance. Otherwise also the decision of the Supreme Court in the case of Union of India vs. Md. Ramzan Khan, reported in 1991(8) SCC 588, is of little help to the petitioner as admittedly the order of penalty in the present case was passed before 20th November , 1990. The apex court, in the later decision, in the case of Managing Director, ACIL Hydrol vs. B. Karunakaran,

reported in JT 1993 SC 1 held that the decision given in Union of India vs. Md. Ramzan Khan is prospective in operation and on the ground of non-supply of inquiry report decided cases shall not be reopened. It is the case where the inquiry report was supplied to the petitioner. The inquiry report was given to the petitioner along with the order of penalty. The issue raised by the counsel for the petitioner is regarding the stage where the report should have been supplied. The apex court in the case of S.K.Singh vs. Central Bank of India, reported in 1996(6) SCC 415 held that non-supply of inquiry report is inconsequential, if no prejudice is caused to the employee officer. In para 3 and 4 of the judgment the apex court observed:

" The only controversy raised in the High Court was that as he was not supplied with the copy of the enquiry report, the order of dismissal was bad in law. The learned Single Judge as well as the Division Bench of the High Court have considered the effect of the judgment of the Constitution Bench of this Court in Managing Director, ECIL v. B. Karunakar. The learned Single Judge as well as the Division Bench of the High Court had asked the petitioner as to what prejudice the petitioner had suffered for non-supply thereof. Since there was no adequate explanation offered by the petitioner, the High Court came to the conclusion that though the copy of the report was not supplied, on the facts, as no prejudice was proved, it was not a case warranting interference.

It is contended by Shri Khanduja, learned counsel forthe petitioner, that since this Court has laid down the law that supply of copy of the enquiry report is a precondition for a competent officer to take disciplinary action, the appropriate course would have been to send back the case to the disciplinary authority. For this course, normally there is no quarrel, as this Court had settled the law that a copy of the report needs to be supplied to the delinquent employee to enable him to make representation against the proposed action or punishment and, thereafter, the authority is required to consider that explanation offered by the petitioner and then to take decision on the quantum of punishment. In this case, though copy of the report was not supplied, he was asked by the learned Single Judge as well as by the Division Bench as to what prejudice he suffered on account

of non-supply of the report; but he was not able to satisfy the learned Judges as to the prejudice caused to him on account of non-supply of the enquiry report. On the facts, we find that there is no illegality in the decision taken by the High Court."

The first contention raised by the counsel for the petitioner is without any merits.

5. The counsel for the petitioner has failed to point out any provision from Regulations 1976 which provides that in case a delinquent officer employee is acquitted in the criminal case, then no departmental inquiry can be initiated against him. The counsel for the petitioner further failed to show that the charges in the criminal case and the departmental inquiry were identical. The charge sheet was given to the petitioner in the present case vide memo dated 26th May, 1972. Criminal case has been initiated for the offence under sections 120B, 420, 468 and 471 read with section 5(2) of the Prevention of Corruption Act. In that criminal case the petitioner has been acquitted. The judgment of the criminal court is produced by the petitioner on the record of this case. But merely on the ground of acquittal of the petitioner for the offences in the aforesaid criminal case, the Bank is not debarred from initiating departmental inquiry against the petitioner . In fact the charge sheet was given to the petitioner on 26th May, 1972 and it appears that the inquiry was not proceeded with pending the criminal case. Only after completion of the criminal case the inquiry was completed and the petitioner, under order impugned in this petition, was dismissed from services. The charges against the petitioner in this case are of very serious nature, as it is borne out from the charge sheet. The charges against the petitioner read as under:

" The circumstances appearing against you are as under:

1. You were the Manager of our Mehsana Branch from May, 1968 to June 1971. During the period from July 1970 to une 1971, you have disbursed several loans under Agricultural Advance, which are against the terms of sanction, irregular and defective. Consequently, they are likely to involve the bank in a serious financial loss.

The details of some such advances are as follows:-

"(a) You have disbursed loans pertaining to dug-well projects. The work regarding dug-well is required to be done in three stages, namely (i) digging an open well; (ii) drilling; and (iii) installation of oil engine and suction pipe. The cost of this has been uniformly estimated at Rs.13,680/-"

It was necessary before considering advances of these types that Agriculturistswho were in need of such assistance from the bank, should have been contacted by you personally, whereas it has been found that the dealers in oil-engine/pumpsets have just suggested the names of Agriculturists and got the signatures/ thumb impressions purporting tobe of the said farmers attested by an Hon. Maginstrate, Shri H. Bhawsar of Mehsana. Before disbursing any amount under these loans, you were required to obtain expert opinion as to the proposals regarding the dug-well and also should have secured a proper sanction from your superior viz. Regional Manager, whereas we find you have deliberately and wilfully disbursed not only initial amounts to the extent of Rs.2,500/- in each case but also you have disbursed further instalments.

Berfore disbursing most of the agricultural advances, more particularly of those pertaining to Dug-well you were instructed to take mortgage of the land in favour of the bank. It has been found that you disbursed the loans in many cases without obtaining the mortgage of the land.

From the inspection of the relative accounts in respect of dug-well projects, it has been found that the number of defective cases are 106 and the amount involved is Rs.4.14 lakhs as per Annexure 'A'. This gross negligence on your part is likely to involve the bank in a serious financial loss which amounts to gross-misconduct.

2. A loan was disbursed to Shri Lavji Vasta at Ishwads, vide proposal No.169 of 71 through a dealer, Thakkar Tairjilal & Shantilal. The said Shri Lavji Vastsis reported dead 10 years ago.

Similar cases of the borrowerswho are either not alive or whose whereabouts are not known are, shown in Annexure 'B' to the Charge sheet. Thus you have committed an act prejudicial to the interest of the bank, of Rs.261.62. This act also amounts to gross misconduct.

3. It appears that with the connivance of the dealer, Ambica Trading Company, you managed to obtain a proposal No.294/70 in the name of Shri Harijan Bhala Lakhu at Vanod and you also managaed to obtain forged receipt after disbursing the loan to the dealer. These aresimilar such cases which are likely to involve the bank in financial loss to the tune of Rs.52,000/- Thus you have committed an act prejudicial to the interests of the bank, which also constitute gross misconduct.

You are hereby required to submit your explanation within 7 days from receipt of this Chargae-sheet, failing which further proceedings as deemed fit will be taken against you."

6. The counsel for the petitioner is not challenging the finding of the inquiry officer and that of the disciplinary authority on the charges against the petitioner. The charges relate to discharge of duties by the petitioner as a Bank officer, which acts of the petitioner are likely to involve the Bank in serious financial loss. As observed earlier, the counsel for the petitioner is unable to point out that the charges were identical both in the criminal case and the departmental inquiry. The approach and objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the question is whether the delinquent is guilty of such misconduct as would merit his removal from services or imposition of lesser punishment as the case may be. Whereas in criminal proceedings the question is whether the offences of which the accused charge sheeted under the Indian Penal Code and the Prevention of Corruption Act are established and if established what sentence should be imposed upon him. The standard of proof and mode of inquiry and the rules governing the inquiry and trial in both the cases are entirely distinct and different. There are catena of decisions of the apex court on the point that there is no legal bar for both the proceedings to go on simultaneously on identical charges. In such cases, it may not be appropriate and desirable, advisable or proper to proceed with the

disciplinary proceedings when criminal case is pending on identical charges. But the matter to stay the disciplinary proceedings has to be determined having regard to the facts and circumstances of the case and no hard and fast rules have been laid down.

7. In the present case, as stated earlier, the criminal proceedings were initiated and the disciplinary proceedings were also initiated. Till the criminal proceedings were completed, the Bank has not proceeded with the departmental proceedings against the petitioner, though it is not the case of the petitioner that no such departmental proceedings were there. So, very fairly and reasonably the Bank has proceeded in the present case, and after holding full-fledged departmental inquiry when the charges were found proved against him, the petitioner has been dismissed from services. Reference may have to the decision of the apex court in the case of State of Karnataka vs. T.Venkataramanappa, 1996(6) SCC 455. There the question for consideration before the apex Court was whether departmental inquiry can be initiated for the alleged misconduct of contracting a second marriage without permission from the Government, wherein the employee officer was acquitted in the prosecution for bigamy.In para 3 of the judgment the apex Court observed :

> "Strict proof of solemnisation of the second marriage must be proved before conviction can be recorded for such offence. The prosecution evidence in the criminal complaint may have fallen short of those standards but that does not mean that the State was in any way debarred from invoking Rule 28 of the Karnataka Civil Service Rules, which forbids a government servant to marry a second time without the permission of the Government. But, the respondent being a Hindu, could never have been granted permission by the Government to marry a second time because of his personal law forbidding such marriage. For the purposes of Rules 28, such strict standards, as would warrant a conviction for bigamy under section 494 IPC, may not be necessary. However, in the presence of the orders of discharge in favour of the respondent, this continued suspension during the enquiry was totally unwarranted."

The second contention raised by the counsel for the petitioner is equally devoid of any substance.

8. The petitioner filed appeal against the order of dismissal and before the appellate authority he has not raised the point that no financial loss was caused to the Bank. The petitioner cannot be allowed to raise a new point before this court. The learned counsel for the petitioner has failed to show that no financial loss has been caused to the bank. Apart from this, even if we proceeded on the footing that no financial loss has been caused to the Bank, and whatever loan advanced by the bank could have been recovered from the borrowers, the question is whether the petitioner should have been exonerated of such a serious charge. In this regard, reference may have to the decision of the Supreme Court in the case of Municipal Committee, Bahadurgarh vs. Krishna Behari, reported in 1996(2) SCC 714. In that case the respondent was dismissed from services of the Bank, on his conviction under section 486 I.P.C. by the criminal court for committing forgery. Against the order of dismissal from service the respondent therein filed appeal. The Director of Local Bodies who, while upholding the correctness of the action, reduced the punishment to stoppage of four increments and has also directed that the period during which the respondent was out of service should be treated as extraordinary leave. The apex court, while dealing with the appeal of the employer, held that the respondent has been convicted of a serious crime, and in a case of such nature - indeed, in cases involving corruption -there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The apex court further observed that the amount misappropriated may be small or large; it is the act of misappropriation that is relevant. Here, also, the act of the petitioner in advancing loans to the borrowers is material and not the fact that financial loss has not been caused to the bank. The contention that the bank has not suffered any financial loss is of no help to the petitioner.

9. The learned counsel for the petitioner has failed to point out any pleading from the special civil application that during the period of suspension the petitioner was not paid subsistence allowance by the Bank. Not only this, the petitioner has not prayed for any relief in respect of this claim. The counsel for the petitioner made reference to para 12(b) of the special civil application and contended that the petitioner has prayed for direction to the respondents to pay him subsistence allowance. Para 12(b) of the special civil application reads as under:

"12(b). .. directing the respondents to treat the petitioner as on duty since 1972 and grant the petitioner all consequential benefits including all arrears of salary, notional promotion and notional fixation of pay and difference between suspension allowance and the actual salary."

The petitioner was placed under suspension in the year 1972. The prayer which has been made in para 12(b) of the petition is to be read with the prayer made by the petitioner in para 12(a). In para 12(a) the petitioner prayed for quashing and setting aside the decision of the inquiry officer and of the disciplinary authority, dated 15th March, 1983 and the order of the appellate authority dated 4th July, 1983, dismissing the petitioner from service. In para 12(b) the petitioner has prayed for consequential relief, i.e. to treat him as on duty since 1972, arrears of salary, notional promotion and notional fixation of pay and difference between suspension allowance and the actual salary. The last part of this prayer pertains to claim of the petitioner for difference between suspension allowance and the actual salary, which means that the petitioner admits that he was getting subsistence allowance for all these years. In case the order of dismissal of the petitioner from services is set aside, then the petitioner may claim difference between subsistence allowance and actual salary, which cannot be equated or accepted to be a prayer for giving him subsistence allowance. This contention of the counsel for the petitioner has no factual foundation as well as no substance on merits.

10. Now I may advert to the last contention urged by the counsel for the petitioner. Looking to the charges framed and found proved against the petitioner, the minimum penalty could have been and should have been dismissal from service. If such an officer employee is retained in the service of the Bank, then certainly it will encourage other officers employees to indulge in activities which may be detrimental to the interest of the Bank.

11. This Court sitting under Article 226 of the Constitution of India has a very very limited power of judicial review in the matterof the punishments tobe given to the delinquent officer employee for his proved misconduct. In the case of State Bank of India vs. Samarendra Kishore Endow, reported in JT 1994(1) SC 217, the apex court held that this court and the Tribunal has no power of judicial review to substitute its own

punishment or to interfere with the punishment given by the disciplinary authority to the delinquent employee officer for his proved misconduct. However, in the later decision, in the case of B.C. Chaturvedi vs. Union of India, reported in JT 1995(8) SC 65, the apex court has observed that this court may interfere where the punishment is found to be disproportionate or harsh or excessive shocking the judicious conscience of the Court, and not in other cases. The apex court further observed that in such cases the proper course is to send the matter to the appropriate authority, and this court should not normally itself go into this question. I do not find that the punishment of dismissal given to the petitioner by the disciplinary authority is harsh or disproportionate to the misconduct which has been found proved against him. For the misconduct which has been alleged against the petitioner and found proved, the only punishment should have been to chop off such an officer from the Bank's services. The punishment of dismissal from services givento the petitioner in the facts and circumstances of the case cannot be said to be of the nature which touches the judicious conscience of this court sitting under Article 226 of the Constitution of India and justifies the interference of this court.

12. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

.....

csm